

## **REMARKS**

### **I. Introduction**

Upon entry of the present amendment, claims 1-24 will be pending in the present application. By the present amendment, the abstract has been amended, claims 1 and 24 have been have been amended, and claims 2 and 3 have been canceled. Amendments to the abstract merely correct language formalities. Claims 1 and 24 has been amended to include that the hinge extends transversely over the entire lid, as in claim 2, and reciting that large variations in thickness of the lid at the hinge have been avoided by integrally molding the hinge as part of the lid. Claim 1 has been further amended to include that the top side of the container is provided with an outer edge having a projection at each location where the hinge ends at the edge of the container, as in claim 3. Claims 1 and 24 have been amended to delete the term "or the like" from the claims. Support for the amendments to claims 1 and 24 may be found in the current specification at, *inter alia*, page 2, line 34, page 4, line 36 to page 5, line 2, and originally filed claims 2 and 3.

In view of the foregoing amendments and the following remarks, Applicant respectfully submits that the claims are now in condition for allowance. Applicant points out that the amendments made herein are made without prejudice to the future prosecution of such cancelled, amended or modified subject matter in a related divisional, continuation or continuation-in-part application.

### **II. Objection to the Specification**

The Office Action objects to the specification because it allegedly includes an abstract that is not in the proper language and format, particularly, the Examiner asserts that the length of the abstract exceeds 150 words and includes the terms "said" and "means" which are considered legal phraseology. By the present amendment, the abstract has been amended to delete the terms "said" and "means" from the abstract. Further, applicants submit that the abstract as amended contains less than 150 words. Accordingly, the abstract complies with the required format. Applicant therefore respectfully submits that the objections to the specification have been overcome and should therefore be withdrawn.

**III. Rejection of Claims 1 to 24 Under 35 U.S.C. § 112, second paragraph**

Claims 1 to 24 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action states that the term “or the like” in claims 1 and 24 renders the claims indefinite.

By the present amendment, the claims 1 and 24 have been amended in accordance with 35 U.S.C. § 112, second paragraph. Specifically, claims 1 and 24 has been amended to delete the term “or the like”. Thus, Applicant respectfully submits that the rejections of the claims under 35 U.S.C. § 112, second paragraph, have been overcome and should therefore be withdrawn.

**IV. Rejection of Claims Under 35 U.S.C. § 103**

Claims 1-2, 4-12, 14-22, and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stern et al. (U.S. Patent 6,102,235) in view of Luburic (Canadian Patent No. 2,379,436) as set forth on pages 4-11 of the Office Action. Claims 3 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stern et al and Luburic as applied to claim 2, and further in view of Rich (U.S. Patent No. 3,412,890), as set forth on pages 11 and 12 of the Office Action. Claim 23 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Stern et al. and Luburic as applied to claim 1 above, and further in view of Lallement et al. (Pre-Grant Publication No. 2001/0013518), as set forth on page 12 and 13 of the Office Action. In addition, in response to Applicant's arguments the Examiner asserts that the motivation to combine the references can be found in that the cost of making a lid out of injection molding is cheaper based on market driven forces to drive down the cost of making parts. Further, according to the Examiner Stern clearly teaches the interface between the lid and the container top to form a seal. Moreover, the Examiner asserts that the reason for combining Luburic with Stern is that Luburic teaches that the lid can be injection molded, and can provide a leak tight seal at the hinge. Further, according to the Examiner Stern teaches that the hinge is integrally molded with the lid and Luburic teaches injection molding and that can be added with

Stern's mentioning of an integrally molded part allows the skilled artisan to manufacture the hinge with the lid in an injection molding operation. Finally, the Examiner asserts that some of the features upon which Applicants relies are not recited in the rejected claims. Applicant respectfully submits that these rejections should be withdrawn for at least the following reasons.

Applicants submit that the combined teaching of the cited references fails to teach or suggest the claimed invention. Although the Stern and Luburic references are both concerned with lids for packaging, they are directed to different technical features of those lids.

Stern is concerned with the structure of the lid for special configuration containers in which a portion of the lid is required to act as a roller-tray, said portion being mechanically supported by the lid itself (column 2, lines 40 to 50). As such, Stern provides a disclosure of: different lid shapes and sizes; surface profiles for the lids; and, the pivoting of one part of the lid relative to another about specific hinges to form an angle ( $\alpha$ ) between them. Stern is not concerned with the interface between the lid (1) and the container (13) or the structure of the lid's border (5); Stern notably fails to provide any specific details regarding the connection of that border (5) to the packaging container (see column 5, lines 6 to 24).

Luburic, by contrast, is strictly concerned with the interface between the lid and the containers and the need to avoid the use of separate gasket members or devices at that point (Abstract and Page 1, lines 7 to 13). As such, Luburic provides a disclosure of several sealing engagements between lids and upper edges of containers. Luburic is not concerned with a self-supporting lid or a lid having any functionality beyond closure of a container. Luburic may depict a lid that comprises two parts (Fig. 1: 32,34) but the citation fails to provide any further details regarding the structure of these two parts.

Further, Applicants submit that claim 1, as amended, requires that the hinge is integrally molded as part of the lid such that large local thickness changes in the lid are avoided at said hinge which transverses over the entire lid and that the top side of the container is provided with an outer edge having a projection at each location where the hinge ends at the edge of the container, which projection, in the closed position of the lid, adjoins the lid in such a manner as to form a seal. Applicants

submit that claim 1, as amended, includes limitations from canceled claim 3 which were not taught or suggested by the cited references. Accordingly, applicants submit that the presently claimed invention as in independent claim 1, and claims 4-12, and 14-22 is not taught or suggested by Stern in combination with Lubric.

Further, with respect to claim 24, applicants submit, as was also acknowledges by the Examiner, that Stern fails to disclose a lid that is formed integrally from plastic or a pivotal connection that is leaktight with respect to the substance held within a container sealed by such a lid. It should also be noted that the first embodiment of Stern (Fig. 1 and column 6, line 13) does not include any description of the thickness of the pivotal connection (41). Additionally, in the preferred embodiment of Stern, the pivotal connection (41) is a series of spaced apart upstanding hooks (75) that necessarily provide large local variations in lid thickness (column 7, line 1). In addition, there is no teaching or suggestion that the hingeline (29) of Luburic would remain liquid-tight when subjected to the stress of a roller thereon. The hinge of Luburic thus fails to provide the features required of the hinge (5, 105) as in the presently claimed invention.

Although Luburic - in one embodiment - may disclose a lid that may be fabricated by injection molding to provide a liquid tight assembly and that this disclosure may thus rectify these particular deficiencies of Stern with respect to claim 24. However, applicants assert where a hinge (31), or more specifically a hingeline (29), is included in the lid of Luburic, it is a line of relative weakness in the structure that merely enables the first (32) and second (34) portions to be pivoted away from each other (page 8, line 16 to 21). There is no disclosure in Luburic that this hingeline (29) may have a substantially similar thickness to the first and second portions as in the claimed invention.

Therefore, as discussed above Stern et al lack any teaching or suggestion of such hinge as one element in the claimed invention. Therefore, the combination of Stern et al and Luburic fails to teach or suggest every element of the presently claimed invention of claim 24.

With respect to the rejections of claims 3, 13, and 23 applicants submit that neither Rich (for claims 3 and 13) nor Lallement (for claim 23) cures the above described failure in the teachings of the combination of Stern et al and Luburic.

Accordingly, at least for the same reasons that the invention in claims 1, 2, 4-12, 14-22, and 24 is not taught or suggested by the cited reference, the invention in claims 3, 13, and 23 is also not taught or suggested by Stern et al in view of Luburic further in view of Rich or further in view of Lallement.

Furthermore, the hinge formed in the cover of Rich is a narrow feature (column 3, lines 16 to 21) formed by grooving, notching or otherwise weakening the cover in the molding thereof (column 1, lines 41 to 43). It follows that the hinge or groove (32) has a local thickness that is very different to the areas of the cover that surround it. This is reflected in the fact that the hinge of Rich merely facilitates the opening of the cover.

The absence of any substantial variation in the thickness of the lid (102) of the present invention at the hinge (105) means that this hinge (105) is not an area of substantial weakness compared to the first and second covering parts (102a, b). The hinge may thus tolerate the forces on it generated by the positioning of a roller on an open first covering part (102a) and any torque caused by the shaking of the container as a whole.

For at least the preceding reasons, it is respectfully submitted that these obviousness rejections have been overcome and should therefore be withdrawn.

## **V. Conclusion**

It is respectfully submitted that all pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,  
KENYON & KENYON LLP

Dated: June 30, 2008

By: Willem F.C. de Weerd  
Willem F.C. de Weerd (Reg. No. 51,613)  
KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
**Customer No. 26646**